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3:01-CV-02031 SAFETY SYRINGES INC V. BECTON DICKINSON

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CMP.

ORIGINAL

FILED

01 NOV -6 AM 8:52

SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

1 LYON & LYON LLP
 2 A Limited Liability Partnership
 3 Including Professional Corporations
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 13 La Jolla, California 92037
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16 Attorneys for Plaintiff,
 17 SAFETY SYRINGES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

01 CV 2031 J (NLS)

15 SAFETY SYRINGES, INC., a) Case No.:
16 Delaware corporation,)
17) COMPLAINT FOR PATENT
18 Plaintiff,) INFRINGEMENT
19)
20 v.)
21) DEMAND FOR JURY TRIAL
22 BECTON, DICKINSON AND COMPANY, a)
23 New Jersey corporation,)
24)
25 Defendant.)
26)
27)
28)

24 Plaintiff, Safety Syringes, Inc. ("Safety Syringes"), files
 25 this Complaint against the above-named defendant, Becton,
 26 Dickinson and Company ("Defendant"), and demanding a trial by
 27 jury, and alleges as follows:

OC-95393.1

COMPLAINT FOR PATENT INFRINGEMENT

LYON & LYON LLP
 1900 MAIN STREET, SIXTH FLOOR
 IRVINE, CALIFORNIA 92614-7319
 (949) 567-2300

cf

JURISDICTION AND VENUE

1. This action for patent infringement arises under the patent laws of the United States, Title 35, United States Code.

2. Subject matter jurisdiction is vested in this Court by 28 U.S.C. §§ 1331 and 1338.

3. Venue is proper under 28 U.S.C. §§ 1391(b), (c) and 1400(b).

THE PARTIES

4. Plaintiff, Safety Syringes, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business at 1939 Palomar Oaks Way, Suite A, Carlsbad, California 92009.

5. Based on information and belief, Defendant, Becton, Dickinson and Company, is a corporation organized to do business under the laws of the State of New Jersey, with its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey 07417.

6. Based on information and belief, Defendant is engaged in the business of manufacturing, promoting, importing, offering for sale and selling injection devices, including needle shield and other safety devices for use with injection devices, throughout the United States.

7. Based on information and belief, Defendant is doing business and resides in the Southern District of California, and has committed acts of infringement in this district, and is causing economic injury to Safety Syringes in this district.

CAUSE OF ACTION FOR PATENT INFRINGEMENT

8. Safety Syringes repeats, realleges, and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 7.

9. On November 6, 2001, U.S. Reissue Patent No. 37,439 entitled "Disposable Self-Shielding Aspirating Syringe" ("the '439 Patent") was duly and legally issued naming John R. Firth and Anthony R. Perez as inventors.

10. By virtue of proper assignment, Safety Syringes has acquired and duly owns all right, title, and interest in this patent, including the right to sue and recover for infringement thereof.

11. On information and belief, Defendant has manufactured, used, sold, offered for sale, and/or distributed devices within the United States, and/or imported devices into the United States, that infringe one or more claims of the '439 Patent, either directly, contributorily, or by inducement, or otherwise, in violation of 35 U.S.C. § 271. On information and belief, such unlawful infringing acts by Defendant are continuing and will continue unless enjoined by this Court.

12. Upon information and belief, by reason of Defendant's acts of infringement, Safety Syringes has suffered and is suffering damages, including impairment of the value of the '439 patent, in an amount yet to be determined.

13. Upon information and belief, Defendant's acts of infringement are causing irreparable harm to Safety Syringes and will continue to cause irreparable harm unless enjoined by this Court.

1 14. Continuation of Defendant's infringing acts will have
2 been committed willfully and with knowledge of Safety Syringes'
3 patent rights and will result in violation of 35 U.S.C. § 284.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Safety Syringes respectfully demands judgment:

7 1. That Defendant has infringed and continues to infringe
8 United States Reissue Patent No. 37,439;

9 2. That preliminarily and permanently enjoins Defendant,
10 its officers, directors, employees, agents, servants, assigns,
11 representatives, successors, subsidiaries, divisions,
12 affiliates, and/or any other person in active concert or
13 participation with Defendant from making, using, selling,
14 offering for sale, or importing infringing devices, and from
15 otherwise infringing, contributing to the infringement of, and
16 inducing infringement of United States Reissue Patent No.
17 37,439, and for all further and proper injunctive relief
18 pursuant to 35 U.S.C. § 283;

19 3. That awards Safety Syringes monetary damages from
20 Defendant for any and all damages allowable by law for
21 infringement and costs and applicable pre- and post-judgment
22 interest to which Safety Syringes is entitled under 35 U.S.C.
23 § 284;

24 4. That the present case be found exceptional and that
25 treble damages and attorneys' fees be awarded to Safety Syringes
26 under 35 U.S.C. §§ 284 and 285; and
27
28

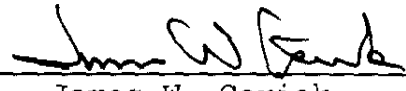
LYON & LYON LLP
1900 MAIN STREET, SIXTH FLOOR
IRVINE, CALIFORNIA 92614-7319
(949) 567-2300

1 5. That Safety Syringes have such other and further
2 relief as the Court may deem equitable.

3 Respectfully submitted,

4 LYON & LYON LLP

5
6 Dated: November 6, 2001

By 
James W. Geriak

7 Attorneys for Plaintiff
8 SAFETY SYRINGES, INC.
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(949) 567-2300

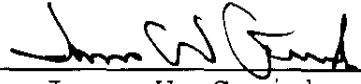
DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Safety Syringes, Inc. hereby demands a trial by jury on all issues triable in this action.

Respectfully submitted,

LYON & LYON LLP

Dated: November 6, 2001

By 
James W. Geriak

Attorneys for Plaintiff
SAFETY SYRINGES, INC.

LYON & LYON LLP
1900 MAIN STREET, SIXTH FLOOR
IRVINE, CALIFORNIA 92614-7319
(949) 567-2300

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
---	--

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO. 01-CV-2031 J(NLS)	DATE FILED 11-06-01	U.S. DISTRICT COURT United States District Court, Southern District of California
PLAINTIFF Safety Syringes, Inc.		DEFENDANT Becton, Dickenson and Company
PATENT NO.	DATE OF PATENT	PATENTEE
1 see complaint (enclosed)		
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
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5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner

Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
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Safety Syringes, Inc.		Becton, Dickenson and Company
PATENT NO.	DATE OF PATENT	PATENTEE
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Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

ORIGINAL

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

SAFETY SYRINGES, INC.
1939 Palomar Oaks Way, Suite A
Carlsbad, California 92009

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

JAMES W. GERIAK
Lyon & Lyon LLP
1900 Main Street, 6th Floor
Irvine, California 92614

DEFENDANTS

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED BY: DEPUTY

ATTORNEYS (IF KNOWN)

Not presently known

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Patent infringement under Title 35, United States Code, Section 271

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property				

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 ☐

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE November 5, 2001

SIGNATURE OF ATTORNEY OF RECORD

JAMES W. GERIAK

76564

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